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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,320	02/13/2001	Bernhard H. van Lengerich	BVL-102A	9819

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EXAMINER	
ROBERTS, LEZAH	

ART UNIT	PAPER NUMBER
1612	

MAIL DATE	DELIVERY MODE
03/01/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/782,320	**Applicant(s)** VAN LENGERICH, BERNHARD H.	
	Examiner LEZAH W. ROBERTS	**Art Unit** 1612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *See Below*.
   Claim(s) withdrawn from consideration: *94*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because:

In regard to the rejection under 35 USC 112 first paragraph, Applicant argues one of ordinary skill in the art would know what structures are encompassed by the recitation of polyvinyl acetate derivatives and modified starch. Further the components are indicated as hydrophobic and therefore further limit the compounds they encompass.

Applicant's arguments are partially persuasive. The rejection is withdrawn in regard to modified starch. In regard to derivatives of polyvinyl acetate, Applicant provides no other characteristics (other than the compounds are hydrophobic) or structure to indicate to one of skill in the art as to what structures are encompassed by the term "derivative" or the extent to which the polymer may be modified before it is no longer considered a derivative of polyvinyl acetate. Therefore one of ordinary skill in the art would not be able to immediately envision what compounds are encompassed by the recitation of polyvinyl acetate "derivatives"

In regard to the rejection under 35 USC 112 second paragraph, Applicant argues the same as above. See Examiner's response above in regard to Applicant's arguments.

The Rejection under 35 USC 103

Applicant argues Newton teaches away from the highly crystalline, retrograded starch matrix of Eden et al which contains collapsed polymer chains. Further the combination of references does not render the claimed products obvious. Applicant also argues Newton does not disclose a plasticized matrix and discloses other components, such as weighing agents, to increase the density in order to increase release time of the active. Further other polymers may also be added to control the release of the active ingredient. Thus there is no reason to modify the compositions of Newton to include a plasticized matrix because the release of the active is controlled by other components in the compositions of Newton. The procedures of Eden would reduce the density of the product which teaches away from Newton which discloses increasing the density of the product. Applicant further argues the starch in Eden is highly crystallized and retrograded, which is the opposite of gelatinization. In regard to the amount of matrix material, Applicant argues the Examiner has not provided evidence that the amount of matrix material is a result effective variable.

The Examiner acknowledges that Newton does not teach a plasticized matrix and asserts that the secondary reference, Eden, discloses a plasticized matrix and gives motivation as to why one of ordinary skill in the art would want to use a plasticized starch in the compositions of Newton. Eden discloses the plasticized matrix protects the active and is temperature stabilized, which is the motivation to plasticize the matrix of Newton. Further the claims do not exclude the components of Newton, such as the weighing agents and the hydrophobic polymers. The claims recite hydrophobic components, which would be encompassed by the hydrophobic polymers of Newton. The claims also recite at least one component for controlling the rate of release of the encapsulant. As admitted by Applicant, the weighing agents control the rate of release of the encapsulant and therefore the weighing agents of Newton encompasses the limitation of "at least one component for controlling the rate of release" recited in the instant claims. In regard to destroying the encapsulant, Eden teaches that the active may be added after heating if the active is sensitive to heat (col. 3, lines 24-31). In regard to the starches of Eden not being gelatinized because they are retrograded, the Examiner submits that the independent claims do not recite the starch must be gelatinized. Further, the dependent claims recite "at least partially gelatinized starch", which would encompass even a small amount of gelatinization. Eden discloses highly retrograded, which would not appear to exclude an amount of starch that is gelatinized. In regard to the density, Eden does not discuss density and Applicant has not provided support that the procedure of Eden would reduce the density of the product. In regard to the references not disclosing heating the starch, Eden does disclose heating the starch when it discloses the temperature of the slurry of starch is raised (col. 3, lines 1-15). In regard to the starch of Eden being substantially destructurized and dextrinized, the claims use the term "substantially" which does not exclude the starch from having a degree of dextrinization or destructurization. Since Applicant does not define what degree of destructurization and dextrinization is encompassed by the recitation of "substantially destructured or dextrinized", the starches of Eden are encompassed by the instant claims. In regard to the amount of matrix material, Newton discloses the matrix binder and a coating serve to control the release of the active (col. 8, lines 53-68), therefore making the matrix a result effective variable. Further, Eden discloses the choice of the starch to be used is dependent in large part on the end use of the encapsulated material particularly the mechanism and desired rate of release, if any, of the material from the encapsulating matrix (col. 2, lines 18-22). Thus the binder is a result effective variable.

In regard to the rejection of Newton et al in view of Eden et al. in further view of Jane et al., see Examiner's response above in regard to the combination of Newton et al. and Eden et al. Jane et al. disclose the use of starch from durum wheat and Eden discloses the starch may be from wheat. The references do not exclude using starch that has not been isolated from its source. Thus it would have been obvious to use durum wheat because it is a source of starch. In regard to the properties of starch derived from wheat durum and wheat durum itself, it would not appear that heating the wheat would alter the properties to make them unsuitable for use in the compositions of the combination of Newton et al and Eden et al. and it would take no more than the relative skill of one of ordinary skill in the art to adjust the amount of wheat durum used to obtain the desire properties base on it matrix forming properties.

Claims 25-31, 34, 35, 37-40, 42, 46, 50, 52-59, 61, 62, 64-67, 69, 70, 73, 75, 79, 81-85, 91-93, 95-97, 101, 103,105 and 108-110 are rejected.